

REMARKS

With entry of this Amendment, claims 24, 25, 30, 31, and 37-66 are pending in this application. New claims 52-66 incorporate subject matter previously presented in claims 24, 28, and 29, and, thus, do not contain any new matter.

Claims 24, 25, 28-31, and 37-51 were previously allowed by the Examiner. (See Notice of Allowance dated February 26, 2004.) The Examiner acknowledges in the Statement of Reasons for Allowance that the references do not "teach, disclose nor make obvious a topical formulation for the treatment of dermatological conditions which comprises a macrocyclic lactone antibiotic and a permeation modulator which are present in relative amounts such that when a therapeutic amount is applied to the skin a minimal systemic effect is produced." (See Statement of Reasons for Allowance, page 1.) The Examiner further alleges that EP 0 435 436 ("Francoeur") "discloses a topical formulation comprising the same two ingredients, however, the formulation is delivered systemically to remote regions in the body." (See Statement of Reasons for Allowance, pages 1-2.) While Applicants agree that *Francoeur*'s teaching is directed to systemic delivery to remote regions of the body, Applicants disagree that *Francoeur* teaches topical formulations as recited in the claims.

The Examiner has not shown how *Francoeur* discloses any element of Applicants' claims, including whether a topical formulation comprising the same two ingredients is disclosed, in as complete detail as is contained in the claims. Applicants further note that to rise to the level of anticipation the law requires that a reference must direct those of skill in the art to what is claimed without selective reconstruction of the

claimed subject matter, *i.e.*, without picking and choosing from the disclosure. *In re Arkley*, 455 F.2d 586, 587, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972). A reference must show the "identical" invention "in as complete detail as is contained in the ... claim[s]." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). The Examiner's comments provided in the Statement of Reasons for Allowance do not satisfy this standard.

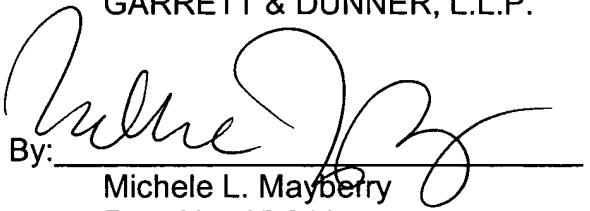
In view of the foregoing Amendment and Remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: _____


Michele L. Mayberry
Reg. No. 45,644

Dated: May 26, 2004